

NOT PRECEDENTIAL

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 02-4473

UNITED STATES OF AMERICA

v.

JAIRO SIERRA CUMPLIDO,
Appellant

On Appeal From The District Court of The Virgin Islands
(D.C. No. 01-cr-00254-1)
District Judge: Honorable Thomas K. Moore

Submitted Under Third Circuit LAR 34.1(a)
December 9, 2003

Before: NYGAARD, BECKER, and STAPLETON,
Circuit Judges

(Filed: December 16, 2003)

OPINION

BECKER, *Circuit Judge*.

This is an appeal by defendant Jairo Sierra-Cumplido from the judgment in a criminal case following a plea of guilty to re-entry after deportation. Following the appeal, defense counsel filed a motion to withdraw and a brief in support of this motion

pursuant to the decision in *Anders v. California*, 386 U.S. 738 (1967). In that brief, after a statement of the case and the facts, counsel makes the following statement:

Counsel for Appellant has diligently searched the record in this matter in good faith, and is not able to assert to this Court that there are any appealable issues which would warrant reversal of Appellant's conviction. However, counsel has found issues which warrant further scrutiny by this Court.

We have carefully examined the record, as well as the issues that counsel has suggested warrant further scrutiny by this Court. However, none of them are of any help to the defendant. While the writer is flattered by the suggestion that his dissenting opinion in *United States v. Denardi*, 892 F.2d 269 (3d Cir. 1989), was correct, the fact is that the majority opinion has prevailed here and in seven other circuits. At all events even if the dissent were the law, it would not help defendant for the facts in this case do not suggest that the refusal to depart was "plainly unreasonable" or would result in unwarranted disparity between sentencing judges. Sierra-Cumplido has previously been sent to prison twice for involvement in cocaine distribution offenses which were committed while he was a permanent resident of the United States. The second cocaine conspiracy offense was committed while he was still on parole for the first offense, and the re-entry offense was committed while he was on supervised release for the second drug offense. And despite mitigating factors, it cannot be said on the record that the refusal to depart was plainly unreasonable or a gross abuse of discretion.

Counsel also directs us to *United States v. Perakis*, 937 F.2d 110 (3d Cir. 1991) and *United States v. King*, 53 F.3d 589 (3d Cir. 1995), but neither of these cases help

defendant either.

After thorough examination of the proceedings, we agree with counsel that there are no non-frivolous issues to raise on appeal. Our jurisprudence requires that counsel in an *Anders* situation adequately attempt to uncover the best arguments for his or her client. *See United States v. Donald Wayne Marvin*, 211 F.3d 778 (3d Cir. 1999). However, having read the entire record, we are satisfied that counsel has fulfilled his *Anders* obligations. Indeed we commend counsel on his diligence, a model of fidelity to *Anders* obligations. We will therefore grant counsel's request to withdraw, and will affirm the judgment on the merits.¹

¹We also note our view that, because the issues presented in the appeal lack legal merit, they do not require the filing of a petition for writ of certiorari with the Supreme Court. 3d Cir. LAR 109.2(b)(2000).

TO THE CLERK:

Please file the foregoing opinion.

/s/ Edward R. Becker
Circuit Judge